

Chapter No. 415
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HOUSE BILL NO. 885

Originated in House



Clerk

HOUSE BILL NO. 885

AN ACT TO REQUIRE HEALTH INSURANCE POLICIES TO PROVIDE COVERAGE FOR AUTISM-RELATED TREATMENT; TO PROVIDE FOR THE LICENSURE AND REGULATION OF THE PRACTICE OF APPLIED BEHAVIOR ANALYSIS; AND FOR RELATED PURPOSES.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MISSISSIPPI:

SECTION 1. (1) Except as otherwise provided herein, a health insurance policy shall provide coverage for the screening, diagnosis, and treatment of autism spectrum disorder. To the extent that the screening, diagnosis, and treatment of autism spectrum disorder are not already covered by a health insurance policy, coverage under this section will be included in health insurance policies that are delivered, executed, issued, amended, adjusted, or renewed in this state, or outside this state if insuring residents of this state, on or after January 1, 2016. No insurer can terminate coverage, or refuse to deliver, execute, issue, amend, adjust, or renew coverage to an individual solely because the individual is diagnosed with or has received treatment for an autism spectrum disorder.

(2) Coverage under this section must not be subject to dollar limits, deductibles, or coinsurance provisions that are less favorable to an insured than the dollar limits, deductibles, or coinsurance provisions that apply to substantially all medical and surgical benefits under the health insurance policy, except as otherwise provided in subsection (5) of this section.

(3) This section shall not be construed as limiting benefits that are otherwise available to an individual under a health insurance policy.

(4) As used in this section:

(a) "Applied behavior analysis" means the individualized design, implementation, and evaluation of instructional and environmental modifications to produce socially significant improvement in human behavior, including the use of direct observation, measurement, and functional analysis of the relationship between environment and behavior.

(b) "Autism spectrum disorder" means any of the pervasive developmental disorders or autism spectrum disorders as defined by the most recent edition of the Diagnostic and Statistical Manual of Mental Disorders (DSM) or the edition that was in effect at the time of diagnosis.

(c) "Behavioral health treatment" means behavior modification and mental health counseling and treatment programs, including applied behavior analysis, that are:

(i) Necessary to develop or restore, to the maximum extent practicable, the functioning of an individual; and

(ii) Provided or supervised by a licensed behavior mental health professional, so long as the services performed are commensurate with the licensed mental health professional's competency area, training and supervised experience.

(d) "Diagnosis of autism spectrum disorder" means medically necessary assessment, evaluations, or tests to diagnose whether an individual has an autism spectrum disorder, as performed by a licensed psychologist or licensed physician.

(e) "Licensed behavior analyst" means a professional licensed under Section 8(d) of this act to practice applied behavior analysis in the State of Mississippi.

(f) "Health insurance policy" includes all individual and group health insurance policies providing coverage on an expense-incurred basis, individual and group service or indemnity type contracts issued by a nonprofit corporation, individual and group service contracts issued by a health maintenance organization or preferred provider organization, all self-insured group arrangements to the extent not preempted by federal law, all plans for state and political subdivisions and all managed health care delivery entities of any type or description providing coverage to any resident of this state.

(g) "Pharmacy care" means medications approved by the United States Food and Drug Administration and prescribed by a

licensed physician, and any health-related services deemed medically necessary to determine the need or effectiveness of the medications.

(h) "Psychiatric care" means direct or consultative services provided by a psychiatrist licensed to practice in the State of Mississippi or as provided under the applicable health insurance policy.

(i) "Psychological care" means direct or consultative services provided by a psychologist licensed to practice in the State of Mississippi or as provided under the applicable health insurance policy.

(j) "Therapeutic care" means services provided by licensed speech-language pathologists, occupational therapists, or physical therapists as covered by the health insurance policy.

(k) "Treatment for autism spectrum disorder" means evidence-based care prescribed or ordered for an individual diagnosed with an autism spectrum disorder by a licensed physician or a licensed psychologist who determines the care to be medically necessary, including, but not limited to:

- (i) Behavioral health treatment;
- (ii) Pharmacy care;
- (iii) Psychiatric care;
- (iv) Psychological care; and
- (v) Therapeutic care.

(1) "Treatment plan" means a written, comprehensive, and individualized intervention plan that incorporates specific treatment goals, individualized with objectives, data collection and analysis plan, and goal change procedures if goals are not met.

(5) Coverage under this section for applied behavior analysis shall be limited to twenty-five (25) hours per week, and shall not be required beyond the age of eight (8) years. No more than ten (10) hours per week shall be for the services of a licensed behavior analyst; however, all services must be provided under the supervision or direction of a licensed behavior analyst or licensed psychologist. Coverage for applied behavior analysis pursuant to an ongoing treatment plan may be extended beyond the limits provided in this subsection if medical necessity for the extension is determined to exist, or in the event of disagreement, the appeal rights under the applicable health insurance policy shall govern.

(6) Except for inpatient services, if an insured is receiving treatment for an autism spectrum disorder, an insurer shall have the right to review the treatment plan every six (6) months, unless the insurer and the insured's treating physician or psychologist agree that a more frequent review is necessary. The cost of obtaining any review of the treatment plan shall be borne by the insurer.

(7) This section shall not be construed to require an insurer to provide coverage for any services to an individual under an individualized family service plan, an individualized education program, or an individualized service plan, required by federal or state law to be performed by public schools, including, but not limited to, individualized education programs, special education services, Individuals with Disabilities Education Improvement Act programs, attention deficit-hyperactivity disorder classrooms, or autism spectrum disorder classrooms.

(8) Nothing in this section shall apply to nongrandfathered plans in the individual and small group markets that are required to include essential health benefits under the Patient Protection and Affordable Care Act or to Medicare supplement, accident-only, specified disease, hospital indemnity, disability income, long-term care, or other limited benefit hospital insurance policies.

(9) A small employer with one hundred (100) or fewer eligible employees that provides or offers a health insurance policy to its employees will offer coverage for the screening, diagnosis and treatment of autism spectrum disorder as provided in this section. The small employer may charge the plan participant with the cost of obtaining the additional coverage.

(10) In the event that any part of this legislation is rendered or declared invalid or unenforceable by a court of competent jurisdiction, such invalidation shall not invalidate the

remaining portions thereof, and they shall remain in full force and effect.

SECTION 2. License required. In order to safeguard life, health and property, no person shall practice applied behavior analysis in this state, or use the title "Licensed Behavior Analyst" or "Licensed Assistant Behavior Analyst," unless such person has secured a license under this chapter.

SECTION 3. Definitions. The following definitions apply as used in this chapter, unless the context otherwise requires:

(a) "Board" means the Mississippi Autism Board.

(b) "Person" means any individual, organization or corporate body, except that only an individual may be licensed under this chapter.

(c) "Practice of applied behavior analysis" means interventions based on scientific research and the direct observation and measurement of behavior and the environment. Behavior analysts utilize contextual factors, motivating operations, antecedent stimuli, positive reinforcement, and other consequences to help people develop new behaviors, increase or decrease existing behaviors, and emit behaviors under specific environmental conditions. The practice of behavior analysis expressly excludes psychological testing, diagnosis of a mental or physical disorder, neuropsychology, psychotherapy, cognitive therapy, sex therapy, psychoanalysis, hypnotherapy, and long-term counseling as treatment modalities.

(d) "Licensed behavior analyst" means an individual currently certified by the Behavior Analyst Certification Board as a Board Certified Behavior Analyst (BCBA) or Board Certified Behavior Analyst-Doctoral (BCBA-D) and licensed under Section 8(d) of this act to practice applied behavior analysis.

(e) "Licensed assistant behavior analyst" means an individual currently certified by the Behavior Analyst Certification Board as a Board Certified Assistant Behavior Analyst (BCABA) and licensed pursuant to Section 8(e) of this act to practice applied behavior analysis under the supervision of a licensed behavior analyst.

(f) "Behavior technician" means an individual currently certified by the Behavior Analyst Certification Board as a Registered Behavior Technician (RBT) to provide applied behavior analysis treatments under the supervision and direction of a licensed behavior analyst or licensed assistant behavior analyst.

SECTION 4. Scope of chapter. (1) Nothing in this chapter shall be construed as preventing or restricting the practice of any of the following:

(a) A licensed psychologist, subject to any rules or regulations of the Mississippi Board of Psychology;

(b) Other licensed health care professionals authorized to practice in the state, so long as the services of the professional are commensurate with the professional's demonstrated

competence and training and within the scope of practice regulated by the professional's licensing authority;

(c) A behavior technician who implements certain applied behavior analysis procedures under the extended authority and direction of a licensed behavior analyst or licensed assistant behavior analyst, provided that the behavior technician is supervised in accordance with the Behavior Analyst Certification Board's supervision standards;

(d) A family member or guardian of a recipient of applied behavior analysis services who implements certain applied behavior analysis procedures in compliance with the training and direction of a licensed behavior analyst or licensed psychologist;

(e) A behavior analyst who practices with nonhumans, including applied animal behaviorists and animal trainers;

(f) An individual who is pursuing supervised experiential training to meet eligibility requirements for Behavior Analyst Certification Board certification, provided that such training is supervised by a licensed behavior analyst and who meet Behavior Analyst Certification Board supervisor requirements, and that the supervised experience is conducted in accordance with other Behavior Analyst Certification Board standards and requirements;

(g) An individual who teaches behavior analysis or conducts behavior analytic research, provided that such teaching

or research does not involve the delivery of direct behavior analytic services;

(h) A professional behavior analyst who provides general behavior analytic services to organizations, so long as those services are for the benefit of the organizations and do not involve direct services to individuals;

(i) A matriculated college or university student whose applied behavior analysis activities are part of a defined course, internship, practicum, or program of study and are supervised by a licensed behavior analyst or an instructor in a Behavior Analyst Certification Board-approved course sequence or practicum. Students and interns must not represent themselves as professional behavior analysts but must use titles that clearly indicate their trainee status, such as "student," "intern," or "trainee"; and

(j) Individuals employed by a school board while performing the regular duties of their office or position. Such individuals shall not represent themselves as professional behavior analysts unless they are licensed behavior analysts or licensed assistant behavior analysts, and shall not offer behavior analytic services to any persons or entities other than their school employer or accept remuneration for providing behavior analytic services other than the remuneration they receive from their school employer.

(2) Subsection (1) of this section shall not be interpreted to expand the scope of practice of any licensed professional who

is not licensed pursuant to this chapter; no individual described in subsection (1) may provide applied behavior analysis treatment outside the scope of their licensed practice.

SECTION 5. Mississippi Autism Board; membership; term of office; appointment; qualifications. (1) The board shall consist of five (5) members. The Governor shall appoint one (1) licensed psychologist practicing in the area of applied behavior analysis, one (1) licensed behavior analyst, and one (1) public member who is not licensed in behavior analysis and who is the family member of a recipient of applied behavior analysis services. The Lieutenant Governor shall appoint two (2) licensed behavior analysts.

(2) The licensed psychologist member shall serve an initial term of one (1) year, the licensed behavior analyst appointed by the Governor shall serve an initial term of two (2) years, the public member shall serve an initial term of three (3) years, and the two (2) licensed behavior analysts appointed by the Lieutenant Governor shall serve initial terms of four (4) years. All subsequent appointees shall serve four-year terms.

(3) All appointees shall serve at the will and pleasure of the appointing official.

(4) Each board member shall serve without compensation, but shall receive actual traveling and incidental expenses necessarily incurred while engaged in the discharge of official duties.

SECTION 6. Authority of the board. (1) The board shall annually elect from its membership a chairman and executive secretary at a meeting held during the last two (2) quarters of the fiscal year. The board shall meet at any other times as it deems necessary or advisable. Reasonable notice of all meetings shall be given in the manner prescribed by the board and in accordance with state law. The presence of three (3) members shall constitute a quorum.

(2) The board is authorized and empowered to:

(a) Investigate and evaluate each and every applicant applying for a license to practice applied behavior analysis;

(b) Issue subpoenas, examine witnesses and administer oaths, and shall, at its discretion, investigate allegations or practices violating the provisions of this chapter; and

(c) Adopt and, from time to time, revise any rules and regulations not inconsistent with, and as may be necessary to carry into effect, the provisions of this chapter.

SECTION 7. Financing administration of provisions. (1) The administration of the provisions of this chapter shall be financed from income accruing from fees, licenses and other charges assessed and collected by the board and from such other funds available to the board.

(2) The board shall receive and account for all funds received and shall keep such funds in a separate fund. Funds collected under the provisions of this chapter shall be used

solely for the expenses of the board and to administer the provisions of this chapter, which may include full or partial financing of continuing education programs promulgated by the board under this chapter. Such funds shall be subject to audit by the Auditor of the State of Mississippi.

(3) The board shall be assigned to the Office of the Secretary of State for administrative and ministerial purposes.

SECTION 8. Eligibility for license. To be eligible for licensure by the board as a behavior analyst or assistant behavior analyst, a person shall:

(a) Submit to the board an application, upon such form and in such manner as the board shall prescribe, along with the applicable fee and personal references;

(b) Certify that the applicant has not been convicted of a felony as defined by the laws of the State of Mississippi;

(c) Undergo a fingerprint-based criminal history records check of the Mississippi central criminal database and the Federal Bureau of Investigation criminal history database. Each applicant shall submit a full set of the applicant's fingerprints in a form and manner prescribed by the board, which shall be forwarded to the Mississippi Department of Public Safety and the Federal Bureau of Investigation Identification Division for this purpose; and

(d) For a behavior analyst:

(i) Possess at least a master's degree, or its equivalent, from an educational institution recognized by the board;

(ii) Have current and active certification by the Behavior Analyst Certification Board as a Board Certified Behavior Analyst (BCBA) or Board Certified Behavior Analyst-Doctoral (BCBA-D), verified by the board; and

(iii) Comply with such other requirements of the board.

(e) For an assistant behavior analyst:

(i) Possess a bachelor's degree, or its equivalent, from an educational institution recognized by the board;

(ii) Have current and active certification by the Behavior Analyst Certification Board as a Board Certified Assistant Behavior Analyst (BCABA), verified by the board; and

(iii) Provide proof of ongoing supervision by a licensed behavior analyst.

(f) All licenses issued pursuant to this section shall be for a term of three (3) years, but shall not exceed the expiration of the licensee's certification by the Behavior Analyst Certification Board.

SECTION 9. Waiver of eligibility requirements. The board may waive the examination for licensure of any applicant who presents proof of current licensure in another state, including

the District of Columbia, or territory of the United States which maintains professional standards considered by the board to be equivalent to those set forth in this chapter. The issuance of a license by reciprocity to a military-trained applicant or military spouse shall be subject to the provisions of Section 73-50-1.

SECTION 10. Temporary licenses. The board shall draft rules and regulations for the granting and renewal of temporary licenses for applicants who have met all eligibility requirements for certification by the Behavior Analyst Certification Board, have taken a certification examination, and are awaiting results of the examination, but otherwise meet the requirements of this chapter.

SECTION 11. License denial, suspension, or revocation. (1)
The board, by an affirmative vote of at least three (3) of its five (5) members, shall withhold, deny, revoke or suspend any license issued or applied for in accordance with the provisions of this chapter, or otherwise discipline a licensed behavior analyst or licensed assistant behavior analyst upon finding that the applicant or licensee:

(a) Has violated the current Behavior Analyst Certification Board Professional Disciplinary and Ethical Standards, the Behavior Analyst Certification Board Guidelines for Responsible Conduct for Behavior Analysts, or other codes of ethical standards adopted by the board, or has lost or failed to renew certification by the Behavior Analyst Certification Board;
or

(b) Has been convicted of a felony or any offense involving moral turpitude, the record of conviction being conclusive evidence thereof; or

(c) Is using any narcotic or any alcoholic beverage to an extent or in a manner dangerous to any other person or the public, or to an extent that such use impairs his ability to perform the work of a licensed behavior analyst or licensed assistant behavior analyst; or

(d) Has impersonated another person holding a license issued under this chapter or allowed another person to use his license; or

(e) Has used fraud or deception in applying for a license provided for in this chapter; or

(f) Has accepted commissions or rebates or other forms of remuneration for referring clients to other professional persons; or

(g) Has allowed his name or license issued under this chapter to be used in connection with any person or persons who perform applied behavior analysis services outside the area of their training, experience or competence; or

(h) Is legally adjudicated mentally incompetent, the record of such adjudication being conclusive evidence thereof; or

(i) Has willfully or negligently violated any of the provisions of this chapter.

(2) The board may recover from any person disciplined under this chapter the costs of investigation, prosecution, and adjudication of the disciplinary action.

(3) Notice shall be effected by registered mail or personal service setting forth the particular reasons for the proposed action and fixing a date not less than thirty (30) days nor more than sixty (60) days from the date of such mailing or such service, at which time the applicant or licensee shall be given an opportunity for a prompt and fair hearing. For the purpose of such hearing the board, acting by and through its executive secretary, may exercise all authority granted to conduct investigations and hearings pursuant to Section 6(2)(a) and (b) of this act. At such hearing the applicant or licensee may appear by counsel and personally on his own behalf. On the basis of any such hearing, or upon default of applicant or licensee, the board shall make a determination specifying its findings of fact and conclusions of law. A copy of such determination shall be sent by registered mail or served personally upon the applicant or licensee. The decision of the board denying, revoking or suspending the license shall become final thirty (30) days after so mailed or served unless within that period the licensee appeals the decision to the Chancery Court of Madison or Rankin Counties, pursuant to the provisions hereof, and the proceedings in chancery shall be conducted as other matters coming before the court. All proceedings and evidence, together with exhibits, presented at

such hearing before the board in the event of appeal, shall be admissible in evidence in the court.

(4) Nothing in this subsection shall be interpreted to prohibit the board from immediately suspending any license prior to a hearing under subsection (3) of this section, when in its sole discretion the suspension is required for the instruction, safety or well-being of any member of the public.

(5) Every order and judgment of the board shall take effect immediately upon its promulgation unless the board in such order or judgment fixes a probationary period for applicant or licensee. Such order and judgment shall continue in effect unless upon appeal the court by proper order or decree terminates it earlier. The board may make public its order and judgments in such manner and form as it deems proper.

(6) Suspension by the board of a license issued under this chapter shall be for a period not to exceed one (1) year. At the end of this period the board shall reevaluate the suspension, and shall either reinstate or revoke the license. A person whose license has been revoked under the provisions of this section may reapply for license after more than two (2) years have elapsed from the date such revocation is legally effective.

(7) In addition to the reasons specified in subsection (1) of this section, the board shall be authorized to suspend the license of any licensee for being out of compliance with an order

for support, in compliance with the procedures set forth in Sections 93-11-151 through 93-11-163.

SECTION 12. **Procedure and fees for renewal.** (1) Except as provided in Section 33-1-39, every applicant for license or renewal pursuant to this chapter shall pay to the board a fee determined by the board, but not to exceed:

(a) Two Hundred Fifty Dollars (\$250.00), in addition to the cost of obtaining the criminal history record, for behavior analysts; and

(b) One Hundred Dollars (\$100.00), in addition to the cost of obtaining the criminal history record, for assistant behavior analysts.

(2) Individuals licensed pursuant to this chapter shall apply for renewal every three (3) years, or upon renewal of certification by the Behavior Analyst Certification Board, have current certification by the Behavior Analyst Certification Board verified by the board, and present evidence of the satisfactory completion of continuing education requirements as determined by the board. The board shall issue a renewal of the license for a term of three (3) years to any licensee complying with the requirements of this section.

(3) A lapsed license under this chapter may be renewed within a period of two (2) years after the lapse, upon payment of all fees in arrears and verification by the board that the applicant is currently certified by the Behavior Analyst

Certification Board. An individual wishing to renew a license that has been lapsed for more than two (2) years shall be required to reapply for licensure.

SECTION 13. **Duty to register behavior technicians.** Licensed behavior analysts and licensed assistant behavior analysts must register with the board all behavior technicians providing services under their supervision. The licensed behavior analyst or licensed assistant behavior analyst shall update the board of the termination of supervision as required by the board.

SECTION 14. **Offenses and penalties.** Any person who violates any provision of this chapter shall, upon conviction, be guilty of a misdemeanor and shall be punished by a fine of not more than One Thousand Dollars (\$1,000.00) or imprisoned in the county jail for a period not exceeding six (6) months, or both.

SECTION 15. **Fees deposited in special fund.** All fees collected by the board under this chapter and any penalties collected by the board for violations of this chapter shall be deposited in a special fund hereby created in the State Treasury and shall be used for the implementation and administration of this chapter when appropriated by the Legislature for such purpose.

SECTION 16. Section 1 of this act shall be codified as a new section in Chapter 9, Title 83, Mississippi Code of 1972. Sections 2 through 15 of this act shall be codified as a new chapter in Title 73, Mississippi Code of 1972.

SECTION 17. This act shall take effect and be in force from and after July 1, 2015.

PASSED BY THE HOUSE OF REPRESENTATIVES
January 29, 2015



SPEAKER OF THE HOUSE OF REPRESENTATIVES

PASSED BY THE SENATE
March 11, 2015



PRESIDENT OF THE SENATE

APPROVED BY THE GOVERNOR



GOVERNOR

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